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CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 706

Introduced by Assembly Member Leno
(Coauthors: Assembly Members Bass, Berg, Brownley, DeSaulnier,
Hancock, Hayashi, Huffman, Jones, Lieber, Ruskin, and
Swanson)

February 22, 2007

An act to amend Sections 125.9, 19161, and 19161.3 of, and to add Section 19161.7 to, the Business and Professions Code, *and to add Chapter 12 (commencing with Section 108950) to Part 3 of Division 104 of the Health and Safety Code*, relating to fire retardants.

LEGISLATIVE COUNSEL'S DIGEST

AB 706, as amended, Leno. ~~Fire retardants; toxic effects; retardants.~~
~~Existing law makes various findings related to the toxicity of certain~~
~~fire retardants containing chemicals known as brominated fire retardants~~
~~(BFRs) and chlorinated fire retardants (CFRs), and prohibits a person~~
~~from manufacturing, processing, or distributing a flame-retardant part~~

~~of a product containing more than one-tenth of 1% of prescribed retardants.~~

~~This bill would revise and extend the findings relating to fire retardants, and would, commencing January 1, 2010, require all seating, bedding, and furniture products to comply with certain requirements, including that they not contain brominated fire retardants or chlorinated fire retardants, except as specified, and be labeled as prescribed.~~

Existing law, the Home Furnishings and Thermal Insulation Act, requires all mattresses and box springs manufactured for sale in this state to be fire retardant, as defined to meet the federal standards for resistance to open-flame test, and authorizes the Bureau of Home Furnishings and Thermal Insulation to adopt regulations to implement those standards. ~~Existing law also~~ *The act* requires other bedding products to comply with regulations adopted by the bureau specifying that those products be resistant to open-flame ignition, *requires all seating furniture to be fire retardant and labeled as specified, and, except as specified, requires all flexible polyurethane foam offered for retail sale to be fire retardant. The bureau has adopted, by regulation, a flame retardance test of the filling materials of residential upholstered furniture.*

~~This bill, commencing January 1, 2010, would require the bureau to modify its standards for prescribed bedding products sold or offered for sale in this state, including, but not limited to, the requirement that they not contain brominated fire retardants or chlorinated fire retardants. The bill would require the Office of Environmental Health Hazard Assessment to review human, animal, or environmental health risk assessments of a component or chemical used to meet fire retardancy standards set by the bureau if specified conditions are met, and would set forth notice and procedural requirements for the review of the risk assessment. The bill would require the office to provide a report to the bureau of its conclusions and recommendations regarding the health risks of the component or chemical and to electronically post the report. The bill would require the bureau, upon receipt of the report, to determine if the health risk warrants a prohibition or limitation of the use of the component or chemical, as specified.~~

~~The bill~~

Commencing July 1, 2009, this bill would require all seating furniture, mattresses, box springs, mattress sets, futons, and other bedding products to comply with certain requirements, including that they not contain a chemical or component not in compliance with the alternatives

assessment requirements described below, or that has been prohibited or restricted from use in the product, and that the product be labeled as specified. The bill would exempt from the requirement that bedding products be resistant to open-flame ignition those products for which the bureau finds that resistance to open-flame ignition cannot be achieved without using those prohibited chemicals or components. The bill would require seating furniture and retail polyurethane foam to comply with bureau regulations specifying the degree of fire or flame retardance. Also commencing July 1, 2009, the bill would require residential upholstered furniture offered for sale in this state to meet or exceed a specified cigarette ignition resistance standard instead of a flame retardance test of the filling materials, unless exempted by the bureau.

Commencing January 1, 2010, this bill would require the Department of Toxic Substances Control to develop and adopt a methodology, and to utilize that methodology in consultation with the Office of Environmental Health Hazard Assessment and any other designated agency, for the coordination and conduct of an alternatives assessment to review the life cycle impacts of components, chemicals, or classes of chemicals used to meet the fire retardancy standards set by the bureau. The bill would authorize the department to adopt regulations in consultation with the chief of the bureau that prohibit or limit the use of a component, chemical, or class of chemicals in the products under the jurisdiction of the bureau, if it determines through the alternatives assessment that the component, chemical, or class of chemicals is of high concern for human, animal, or environmental health. Commencing January 1, 2015, the bill would require any component or chemical used to meet the fire retardancy standards set by the bureau to first be certified by the Director of Toxic Substances Control to be in compliance with the alternatives assessment requirements. The bill would require the Department of Toxic Substances Control to maintain a list of certified components and chemicals and to provide that list to the bureau, and would require the bureau to post that list on its Internet Web site. Beginning on January 1, 2010, the bill would require the department, in consultation with the Office of Environmental Health Hazard Assessment and any other designated agency, to commence an alternatives assessment of brominated fire retardants and chlorinated fire retardants used to meet the fire retardancy standards of the bureau. The bill would provide that moneys in the Bureau of Home Furnishings and Thermal Insulation

Fund shall be available, upon appropriation by the Legislature, to the department to implement these provisions.

This bill would include legislative findings, and would make a related change involving the assessment of administrative fines pursuant to the Home Furnishings and Thermal Insulation Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 “Crystal Golden-Jefferson ~~Furniture Safety and~~ Fire Prevention
3 Act.”

4 SEC. 2. The Legislature finds and declares all of the following:

5 (a) California has been a world leader in fire safety standards
6 for furniture since the early twentieth century. A construction
7 standard for mattresses developed by the California Bureau of
8 Home Furnishings and Thermal Insulation and by the mattress
9 industry has been adopted as a national standard by the United
10 States Consumer Product Safety Commission.

11 (b) Maintaining or exceeding the current level of fire safety
12 provided by California’s furniture standards is important to the
13 safety of our residents and our firefighters. Furniture provides a
14 major fuel source in residential fires and, if ignited, can accelerate
15 the onset of flashover, which is the point at which nearly all
16 combustible material in an enclosed area simultaneously ignites.
17 Preventing or delaying flashover and preventing fires that start in
18 furniture through fire safety standards saves lives. California should
19 continue its leadership in furniture fire prevention and safety.

20 (c) In recent years research has revealed that some fire retardant
21 chemicals are dangerous to human, animal, and environmental
22 health. Organobromide and organochloride chemicals known as
23 brominated fire retardants (BFRs) and chlorinated fire retardants
24 (CFRs) are widely used in California. To meet our fire safety
25 standards, many manufacturers add BFRs and CFRs to the flexible
26 polyurethane foam used in residential furniture.

27 (d) Some fire retardants migrate in air, soil, or water, and
28 accumulate in people’s bodies and the environment. For example,
29 polybrominated diphenyl ethers (PBDEs), which are a subcategory
30 of BFRs, have increased more than forty-fold in human breast milk

1 in America since the 1970s. Women in North America on average
2 have 10 times the levels of women in Europe or Asia. PBDEs have
3 the potential to disrupt thyroid hormone balance and contribute to
4 a variety of developmental deficits, including low intelligence and
5 learning disabilities. PBDEs are structurally similar to dioxin,
6 furans, and polybrominated biphenyls, which are known to cause
7 cancer.

8 (e) According to an American Public Health Association
9 Consensus Resolution, virtually all organochlorides that have been
10 studied exhibit one or more serious toxic effects, including
11 endocrine dysfunction, developmental impairment, birth defects,
12 reproductive dysfunction, immunosuppression, and cancer, often
13 at extremely low doses. Organobromides are known to exhibit
14 similar effects, and the American Public Health Association has
15 resolved that the organobromides known as PBDEs should be
16 phased out of all products.

17 (f) Recent studies indicate that BFRs and CFRs have migrated
18 into the environment, and have been detected at high concentrations
19 in fish, as well as marine mammals, including, but not limited to,
20 dolphins and harbor seals, indicating that the chemicals are already
21 bioaccumulating in the food chain and in marine wildlife. Fish and
22 meat consumption are partly responsible for increasing levels of
23 some BFRs and CFRs in humans.

24 (g) Apart from *the* toxic effects in humans and animals from
25 direct exposures, these chemical substances have been disposed
26 of in ways that contaminate soils, groundwater, sediment, ambient
27 air, and natural ecosystems.

28 (h) According to the federal Centers for Disease Control and
29 Prevention, infants and children are particularly prone to absorb
30 BFRs and CFRs through direct physical or oral contact with these
31 compounds in furniture, inhalation of furniture dust containing
32 BFRs and CFRs, and via ingestion of these substances from their
33 mothers' milk and from their diets.

34 (i) Rates of pediatric health problems, such as leukemia and
35 brain cancer in children, testicular cancer in adolescents, birth
36 defects, and neurodevelopmental disorders, including, but not
37 limited to, dyslexia, mental retardation, attention
38 deficit/hyperactivity disorder (ADHD), and autism, are steadily
39 rising.

1 (j) Over the last 30 years, there have been hundreds of scientific
2 journal articles and reviews citing these and other negative health
3 impacts resulting from exposure to brominated and chlorinated
4 fire retardants.

5 (k) Utilizing existing technologies in both chemical fire
6 retardants and in construction techniques, the mattress and
7 institutional furniture industries have achieved a higher level of
8 fire safety without the use of BFRs and CFRs. Updating California
9 statute and regulation will enable the residential furniture industry
10 to do the same.

11 (l) A 2003 study at Umeå University in Sweden found that
12 brominated fire retardants efficiently convert into dioxins and
13 furans when they combust after just seconds of delayed flame
14 ignition. Dioxins and furans have been designated by the National
15 Toxicology Program of the United States Department of Health
16 and Human Services as known human carcinogens and, in the case
17 of dioxins, contact with skin is a primary route of human exposure.

18 (m) A 2006 study published in the Journal of Occupational and
19 Environmental Medicine found that firefighters have a probable
20 cancer risk for multiple myeloma, non-Hodgkin's lymphoma,
21 prostate cancer, and testicular cancer. Eight additional cancers also
22 were found to have a possible occupational link to firefighting.
23 The presence of carcinogenic chemical byproducts in soot and
24 smoke, such as dioxins and furans created when brominated fire
25 retardants burn, are considered the probable source of workplace
26 cancer risks for firefighters.

27 (n) On July 20, 2005, a Los Angeles County Fire Department
28 firefighter named Crystal Golden-Jefferson passed away from
29 workplace related non-Hodgkin's lymphoma. She was a single
30 mother and a dedicated paramedic firefighter with 19 years of
31 service to the people of Los Angeles County. While the cause of
32 Crystal Golden-Jefferson's cancer can not be definitively linked
33 to dioxin exposure, dioxins are known to cause non-Hodgkin's
34 lymphoma, and Crystal Golden-Jefferson was regularly exposed
35 to soot and smoke in her work.

36 (o) In naming this act, it is the intent of the Legislature to honor
37 Crystal Golden-Jefferson and other firefighters who, like her, have
38 lost their lives due to toxic chemical exposure and workplace
39 related cancers. Removing from furniture chemicals that convert
40 into carcinogenic dioxins and furans during fires can reduce work

place exposures and cancer risk for firefighters who bravely sacrifice their lives so that others may live.

(p) With technologically and economically feasible alternatives that provide equivalent or superior fire retardancy, it is not prudent to continue to use BFRs and CFRs in furniture, *mattresses, bedding, and children's products* without a comprehensive assessment of their impact. In order to protect public health, worker and firefighter safety, wildlife, and the environment, the Legislature finds that it is necessary to ~~prohibit~~ *evaluate* the use of brominated and chlorinated fire retardants in furniture, mattresses, and bedding until the safety of these fire retardants can be demonstrated using prevailing national standards for toxicity risk assessment. *bedding, and children's products using a thorough alternatives assessment process to determine the safest methods to maintain and expand fire safety in California.*

SEC. 3. Section 125.9 of the Business and Professions Code is amended to read:

125.9. (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation that may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission if the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) Except as provided in paragraph (4), in no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars (\$5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars (\$5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or

1 commission shall give due consideration to the appropriateness of
2 the amount of the fine with respect to factors such as the gravity
3 of the violation, the good faith of the licensee, and the history of
4 previous violations.

5 (4) In the case of any violation pursuant to Chapter 3
6 (commencing with Section 19000) of Division 8, in no event shall
7 the administrative fine assessed by the bureau exceed twenty-five
8 thousand dollars (\$25,000) for each inspection or each investigation
9 made with respect to the violation, or five thousand dollars (\$5,000)
10 for each violation or count. In assessing a fine, the bureau shall
11 give due consideration to the appropriateness of the amount of the
12 fine with respect to factors such as the gravity of the violation, the
13 good faith of the licensee, and any history of previous violations.

14 (5) A citation or fine assessment issued pursuant to a citation
15 shall inform the licensee that if he or she desires a hearing to
16 contest the finding of a violation, that hearing shall be requested
17 by written notice to the board, bureau, or commission within 30
18 days of the date of issuance of the citation or assessment. If a
19 hearing is not requested pursuant to this section, payment of any
20 fine shall not constitute an admission of the violation charged.
21 Hearings shall be held pursuant to Chapter 5 (commencing with
22 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
23 Code.

24 (6) Failure of a licensee to pay a fine within 30 days of the date
25 of assessment, unless the citation is being appealed, may result in
26 disciplinary action being taken by the board, bureau, or
27 commission. If a citation is not contested and a fine is not paid,
28 the full amount of the assessed fine shall be added to the fee for
29 renewal of the license. A license shall not be renewed without
30 payment of the renewal fee and fine.

31 (c) The system may contain the following provisions:

32 (1) A citation may be issued without the assessment of an
33 administrative fine.

34 (2) Assessment of administrative fines may be limited to only
35 particular violations of the applicable licensing act.

36 (d) Notwithstanding any other provision of law, if a fine is paid
37 to satisfy an assessment based on the finding of a violation,
38 payment of the fine shall be represented as satisfactory resolution
39 of the matter for purposes of public disclosure.

1 (e) Administrative fines collected pursuant to this section shall
2 be deposited in the special fund of the particular board, bureau, or
3 commission.

4 SEC. 4. Section 19161 of the Business and Professions Code,
5 as added by Section 14 of Chapter 760 of the Statutes of 2006, is
6 is amended to read:

7 19161. (a) All mattresses and mattress sets manufactured for
8 sale in this state shall be fire retardant. "Fire retardant," as used in
9 this section, means a product that meets the standards for resistance
10 to open-flame test adopted by the United States Consumer Product
11 Safety Commission and set forth in Part 1633 of Title 16 of the
12 Code of Federal Regulations. The bureau may adopt regulations
13 it deems necessary to implement those standards.

14 (b) All other bedding products that the bureau determines
15 contribute to mattress bedding fires shall comply with regulations
16 adopted by the bureau specifying that those products be resistant
17 to open-flame ignition, except in the case that the bureau finds that
18 resistance to open-flame ignition cannot be achieved without using
19 components or chemicals prohibited pursuant to Section 19161.7.

20 (c) All seating furniture sold or offered for sale by an importer,
21 manufacturer, or wholesaler for use in this state, including any
22 seating furniture sold to or offered for sale for use in a hotel, motel,
23 or other place of public accommodation in this state, and
24 reupholstered furniture to which filling materials are added, shall
25 comply with the regulations adopted by the bureau specifying the
26 degree of fire or flame retardance, shall be labeled in a manner
27 specified by the bureau, and shall comply with ~~Section 108931~~
28 *Sections 19161.7 and 108951* of the Health and Safety Code. This
29 does not include furniture used exclusively for the purpose of
30 physical fitness and exercise.

31 (d) Regulations adopted by the bureau for other bedding
32 products shall not apply to any hotel, motel, bed and breakfast,
33 inn, or similar transient lodging establishment that has an automatic
34 fire extinguishing system that conforms to the specifications
35 established in Section 904.1 of Title 24 of the California Code of
36 Regulations.

37 SEC. 5. Section 19161.3 of the Business and Professions Code
38 is amended to read:

39 19161.3. All flexible polyurethane foam in the form of slabs,
40 blocks, or sheets, or which is shredded (loose or packaged), except

1 polyurethane foam sold for use as carpet underlayment and
2 polyurethane foam which cannot reasonably be expected to be
3 used in or as an article of furniture or a mattress, that is offered
4 for sale to the general public at retail outlets in this state for
5 noncommercial or nonmanufacturing purposes, shall comply with
6 the regulations adopted by the bureau specifying the degree of fire
7 or flame retardance. *At the discretion of the bureau, fire or flame*
8 *retardance may be provided by construction methods or other*
9 *means specific to the product in which the flexible polyurethane*
10 *foam is intended to be used.*

11 SEC. 6. Section 19161.7 is added to the Business and
12 Professions Code, to read:

13 19161.7. (a) The following definitions shall apply for purposes
14 of this section:

15 (1) "Brominated fire retardant" means an organobromine
16 chemical or organobromide used as a fire or flame retardant. It
17 does not include inherently fire or flame resistant fiber used in
18 seating furniture, mattresses, or other bedding products.

19 (2) "Chlorinated fire retardant" means an organochlorine
20 chemical or organochloride used as a fire or flame retardant. It
21 does not include inherently fire or flame resistant fiber used in
22 seating furniture, mattresses, or other bedding products.

23 (3) "Inherently fire or flame resistant fiber" means a polymeric
24 fiber or mixture of polymeric fibers, where one or more fibers is
25 comprised of a polymer with covalently attached fire retarding
26 chemical groups built directly into the molecular structure of some
27 or all of the repeating structural units. Nothing in this definition
28 shall be construed to limit the authority of the bureau to prohibit
29 the use of components or chemicals pursuant to subdivision (f).

30 (b) Commencing ~~January 1, 2010~~ *July 1, 2009*, all seating
31 furniture, mattresses, box springs, mattress sets, futons, and other
32 bedding products including, but not limited to, pillows, comforters,
33 other filled blanket products, and sleeping bags that are sold or
34 offered for sale by an importer, manufacturer, or wholesaler for
35 use in this state, including any seating furniture, mattresses, box
36 springs, mattress sets, futons, and other bedding products including,
37 but not limited to, pillows, comforters, other filled blanket products,
38 and sleeping bags sold to or offered for sale for use in a hotel,
39 motel, or other place of public accommodation in this state, and

1 reupholstered furniture to which filling materials are added, shall
2 comply with the following:

3 ~~(1) Shall not contain brominated fire retardants or chlorinated~~
4 ~~fire retardants, unless the bureau has issued an exemption from~~
5 ~~prohibition pursuant to subdivision (h) for the brominated fire~~
6 ~~retardant or chlorinated fire retardant.~~

7 *(1) Shall not contain a component or chemical used to meet the*
8 *fire retardancy standards set by the bureau or statute that is not*
9 *in compliance with the alternatives assessment requirements of*
10 *Section 108951 of the Health and Safety Code.*

11 *(2) Shall not contain a chemical, component, or class of*
12 *chemicals that has been prohibited or restricted from use in the*
13 *product pursuant to Sections 108922 and 108951 of the Health*
14 *and Safety Code or any other state or federal law.*

15 ~~(2)~~

16 (3) Shall be labeled with a permanent label attachment in a
17 manner specified by the bureau.

18 (c) All permanent label attachments required pursuant to
19 subdivision (b) shall comply with the following:

20 (1) Use plain language understandable to consumers, and in
21 sufficient size as to be readily visible and legible.

22 ~~(2) Include the following statement, "DOES NOT CONTAIN~~
23 ~~BROMINATED OR CHLORINATED FIRE RETARDANTS,"~~
24 ~~except in the case of a product that contains a brominated fire~~
25 ~~retardant or a chlorinated fire retardant for which the bureau has~~
26 ~~issued an exemption from prohibition pursuant to subdivision (h).~~

27 ~~(3) Include other markings or language specified by the bureau.~~

28 ~~(d) By January 1, 2010, the bureau shall modify Technical~~
29 ~~Bulletins 116 and 117 with product standards for furniture that~~
30 ~~shall achieve fire retardancy properties equivalent to existing~~
31 ~~standards, sufficient to protect human health and safety, but without~~
32 ~~the use of brominated fire retardants and chlorinated fire retardants~~
33 ~~and without significant increases in costs to the consumer.~~

34 ~~(e) (1) The Office of Environmental Health Hazard Assessment~~
35 ~~shall review human, animal, or environmental health risk~~
36 ~~assessments of a component or chemical used to meet fire~~
37 ~~retardancy standards set by the bureau if all of the following~~
38 ~~conditions are met:~~

1 (A) The chief of the bureau has submitted a request for a risk
2 assessment or an interested person has submitted a petition for a
3 risk assessment pursuant to paragraph (4).

4 (B) The office has determined in its discretion that a risk
5 assessment shall be pursued.

6 (C) The person responsible for the manufacture of the
7 component or chemical has entered into an enforceable agreement
8 with the office to fully reimburse the office for all of the costs
9 associated with coordination and evidentiary review of the risk
10 assessment.

11 (2) Within 90 days of receipt of a request or petition, the office
12 shall notify the requester or petitioner whether the office will seek
13 an enforceable agreement with the person responsible for
14 manufacture of the component or chemical used to meet fire
15 retardancy standards set by the bureau.

16 (3) The bureau may use fines collected for violations of this
17 chapter to reimburse the office for the actual costs associated with
18 determining if a risk assessment requested by the chief of the
19 bureau will be pursued. All other costs related to the risk
20 assessment shall be reimbursed by the person responsible for
21 manufacture pursuant to paragraph (5).

22 (4) A petition for risk assessment may be submitted to the office
23 by any interested person. The petition shall include the name and
24 manufacturer of the component or chemical used to meet fire
25 retardancy standards set by the bureau, and may include relevant
26 comments, data, studies, or other written information documenting
27 the risk to human, animal, or environmental health. The office may
28 charge a fee set by the office, not to exceed one thousand dollars
29 (\$1,000), to be paid by the petitioner for the actual costs associated
30 with determining if the risk assessment will be pursued. All other
31 costs related to the risk assessment shall be reimbursed by the
32 person responsible for manufacture pursuant to paragraph (5).

33 (5) If the office determines that a risk assessment shall be
34 pursued, the office shall send the person responsible for
35 manufacture of the component or chemical a request for risk
36 assessment, requesting evidence of safety to human, animal, or
37 environmental health, specifying endpoint concerns for the intended
38 use to be addressed, setting a due date for when the risk assessment
39 shall be completed, and stating the estimated cost to be reimbursed
40 to the state for evidentiary review of the risk assessment. Within

1 90 days of the date of receipt of the request for risk assessment,
2 the person responsible for manufacture shall enter into an
3 enforceable agreement with the office to fully reimburse the office
4 for all the costs associated with coordinating and reviewing the
5 risk assessment. Failure by the person responsible for manufacture
6 to enter into an enforceable agreement with the office shall result
7 in the prohibition of use of the component or chemical in products
8 under the jurisdiction of the bureau. The office shall issue a failure
9 to comply letter to the person responsible for manufacture and
10 shall notify the bureau. The bureau shall determine through
11 regulation the date at which the resulting prohibition of use shall
12 be effective, except that the date shall not exceed two years from
13 the issuance of the failure to comply letter from the office.

14 (6) Each risk assessment shall be completed using prevailing
15 national standards for risk assessments and shall be based on
16 scientifically valid studies conducted according to prevailing
17 national standards as determined by the office prior to
18 commencement of the risk assessment.

19 (7) Upon the receipt of the risk assessment from the person
20 responsible for manufacture, the office shall review the risk
21 assessment and may request additional evidence of safety related
22 to the endpoint concern for the intended use identified in the
23 request for risk assessment.

24 (8) The office shall, upon the signing of an enforceable
25 agreement with a person responsible for manufacture as provided
26 by this section, electronically post on its Internet Web site a notice
27 that a risk assessment has been initiated. The notice shall respect
28 proprietary concerns of the person responsible for manufacture
29 and shall include both of the following:

30 (A) A brief description, or a bibliography, of the technical
31 documents or other information the office has identified to date
32 as relevant to the preparation of the risk assessment.

33 (B) A statement to inform persons who wish to submit
34 information concerning the component or chemical that is the
35 subject of the risk assessment of the name and address of the person
36 in the office to whom the information may be sent, the date by
37 which the information must be received in order for the office to
38 consider it in the review of the risk assessment, and that all
39 information submitted will be made available to any member of
40 the public who requests it.

1 ~~(9) Upon completion of the review of the risk assessment, the~~
2 ~~office shall do all of the following:~~

3 ~~(A) Provide a report to the bureau of its conclusions and~~
4 ~~recommendations regarding the risk to human, animal, or~~
5 ~~environmental health.~~

6 ~~(B) Include its recommendation of a level of exposure with no~~
7 ~~significant risk to public health based on probable usage.~~

8 ~~(C) Electronically post the report or a redacted version of the~~
9 ~~report respecting proprietary concerns of the person responsible~~
10 ~~for manufacture.~~

11 ~~(10) If the office finds in its review of the risk assessment that~~
12 ~~currently available scientific data are insufficient to determine a~~
13 ~~safe level of exposure to the component or chemical at which there~~
14 ~~is no significant risk to human, animal, or environmental health~~
15 ~~based on probable usage, the office shall recommend to the bureau~~
16 ~~a level of exposure that is expected to protect public health. This~~
17 ~~level shall be based exclusively on health considerations and shall~~
18 ~~be determined, to the extent scientific data are available, using the~~
19 ~~most current principles, practices, and methods used by public~~
20 ~~health professionals who are experienced practitioners in the fields~~
21 ~~of epidemiology, risk assessment, toxicology, and exposure~~
22 ~~assessment. The office may recommend a level of exposure of~~
23 ~~zero if necessary to satisfy the requirements of this section.~~

24 ~~(f) The Bureau of Home Furnishings and Thermal Insulation,~~
25 ~~in consultation with the California Office of Environmental Health~~
26 ~~Hazard Assessment, may adopt regulations that protect human~~
27 ~~health and safety, and the environment, and in products under its~~
28 ~~jurisdiction may prohibit or limit the use of components or~~
29 ~~chemicals for which the safety to human, animal, or environmental~~
30 ~~health cannot be clearly established.~~

31 ~~(g) Upon receipt of the office's report on its review of a risk~~
32 ~~assessment of a component or chemical used to meet the fire~~
33 ~~retardancy standards of the bureau, the bureau shall determine if~~
34 ~~the risk to human, animal, or environmental health warrants a~~
35 ~~prohibition or limitation of the use of a component or chemical in~~
36 ~~products under the jurisdiction of the bureau pursuant to~~
37 ~~subdivision (f). In making this determination the bureau shall~~
38 ~~consider all of the following:~~

1 ~~(1) The best available evidence of the degree of fire safety~~
2 ~~achieved and the number of burn injuries or fatalities that may be~~
3 ~~prevented by the use of the component or chemical.~~

4 ~~(2) The safe levels of exposure to the component or chemical~~
5 ~~based on probable usage recommended by the office's report on~~
6 ~~the risk assessment.~~

7 ~~(3) The human, animal, or environmental health impacts~~
8 ~~identified by the office report of a lifetime daily exposure to the~~
9 ~~component or chemical.~~

10 ~~(4) The availability of alternatives for the component or~~
11 ~~chemical in the products under the jurisdiction of the bureau.~~

12 ~~(5) The efficacy of other means to reduce burn injuries or~~
13 ~~fatalities including, but not limited to, furniture construction~~
14 ~~standards, existing or expanded limitations on ignition sources,~~
15 ~~reduction of fuel load, existing or improved electrical or building~~
16 ~~materials and building standards, and expanded use of fire safety~~
17 ~~equipment, including sprinkler systems, smoke detectors, and other~~
18 ~~technologies that might extinguish or warn of the presence of fire.~~

19 ~~(h) The chief of the bureau may submit a request for risk~~
20 ~~assessment, or any interested person may utilize the petition for~~
21 ~~risk assessment, for the purpose of reconsideration of a prohibition~~
22 ~~from use or a limitation in use of a component or chemical pursuant~~
23 ~~to paragraph (1) of subdivision (b) or subdivision (f), based on~~
24 ~~evidence of safety. All provisions of subdivision (e) shall apply~~
25 ~~to a risk assessment for the purpose of reconsideration. If the office~~
26 ~~determines in its report to the bureau that a risk assessment~~
27 ~~demonstrates that the prohibited or use-limited component or~~
28 ~~chemical, in its manufacture, handling, probable use, and disposal,~~
29 ~~is safe to human, animal, and environmental health, the bureau~~
30 ~~may issue to the person responsible for manufacture an exemption~~
31 ~~from prohibition or an exemption from limited use.~~

32 ~~(2) For products containing less than one one-hundredth of 1~~
33 ~~percent of brominated fire retardants or chlorinated fire retardants,~~
34 ~~or both, include the following statement, "DOES NOT CONTAIN~~
35 ~~HALOGENATED FIRE RETARDANTS."~~

36 ~~(3) For products containing one one-hundredth of 1 percent or~~
37 ~~more of brominated fire retardants or chlorinated fire retardants,~~
38 ~~or both, include the following statement, "CONTAINS~~
39 ~~HALOGENATED FIRE RETARDANTS."~~

40 ~~(4) Include other markings or language specified by the bureau.~~

(d) (1) Beginning on July 1, 2009, Technical Bulletin 117 is repealed, and all products within the scope of Technical Bulletin 117 and offered for sale in this state shall meet or exceed the cigarette ignition resistance standard ASTM E 1353-08a.

(2) The bureau may exempt products from the cigarette ignition resistance standard established in paragraph (1) if those products do not represent a significant fire risk.

(3) The bureau may update the cigarette ignition resistance standard established in paragraph (1) to improve fire safety or to comply with subsequent federal standards.

(4) The bureau shall be responsible for enforcing paragraph (1) and, commencing January 1, 2009, Section 108922 of the Health and Safety Code with respect to the products under the jurisdiction of the bureau.

(e) The bureau shall post on its Internet Web site a list of components and chemicals certified by the Director of Toxic Substances Control to be in compliance with alternatives assessment requirements, including any categorizations or use limitations, and excluding any components, chemicals, or classes of chemicals that have been prohibited pursuant to Section 108951 of the Health and Safety Code or any other state or federal law.

SEC. 7. Chapter 12 (commencing with Section 108950) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

CHAPTER 12. ALTERNATIVES ASSESSMENT FOR FIRE
RETARDANTS

108950. (a) The following definitions shall apply for purposes of this chapter:

(1) "Bioaccumulative" means having a bioconcentration factor or bioaccumulation factor greater than or equal to 500, or if neither is available, having a logarithm octanol-water partition coefficient (log Kow) greater than, or equal to, four.

(2) "Brominated fire retardant" means an organobromine chemical or organobromide used as a fire or flame retardant. It does not include inherently fire or flame resistant fiber used in seating furniture, mattresses, or other bedding products.

(3) "Bureau" means the Bureau of Home Furnishings and Thermal Insulation.

1 (4) “Chlorinated fire retardant” means an organochlorine
2 chemical or organochloride used as a fire or flame retardant. It
3 does not include inherently fire or flame resistant fiber used in
4 seating furniture, mattresses, or other bedding products.

5 (5) “Department” means the Department of Toxic Substances
6 Control.

7 (6) “Director” means the Director of Toxic Substances Control.

8 (7) “Inherently fire or flame resistant fiber” means a polymeric
9 fiber or mixture of polymeric fibers, where one or more fibers is
10 comprised of a polymer with covalently attached fire retarding
11 chemical groups built directly into the molecular structure of some
12 or all of the repeating structural units. Nothing in this definition
13 shall be construed to limit the authority of the department to
14 prohibit the use of components or chemicals pursuant to
15 subdivision (e) of Section 108951.

16 (8) “Persistent” means having a half-life greater than, or equal
17 to, 40 days in marine or freshwater, 60 days in soil or sediment,
18 or two days in air.

19 (9) “Trade secret” means any formula, plan, pattern, process,
20 tool, mechanism, compound, procedure, production data, or
21 compilation of information that is not patented, that is known only
22 to certain individuals within a commercial concern who are using
23 it to fabricate, produce, or compound an article of trade or a
24 service having commercial value, and that gives its user an
25 opportunity to obtain a business advantage over competitors who
26 do not know or use it.

27 108951. (a) (1) Beginning January 1, 2015, any component
28 or chemical used to meet the fire retardancy standards set by
29 the bureau shall first be certified by the director to be in
30 compliance with the alternatives assessment requirements of this
31 section.

32 (2) The department shall maintain a list of components and
33 chemicals certified by the director pursuant to paragraph (1),
34 including any categorizations or use limitations, and excluding
35 any components, chemicals, or classes of chemicals that have been
36 prohibited pursuant to this section or any other state or federal
37 law. The department shall provide the list to the bureau, and the
38 list shall be posted on the bureau’s Internet Web site as required
39 by subdivision (e) of Section 19161.7 of the Business and
40 Professions Code.

1 (b) On or before January 1, 2010, the department shall develop
2 and adopt, through a transparent and public process, a
3 methodology for the coordination and conduct of an alternatives
4 assessment in compliance with this section to review the life cycle
5 impacts of components, chemicals, or classes of chemicals used
6 to meet the fire retardancy standards set by the bureau.

7 (c) The department, in consultation with the Office of
8 Environmental Health Hazard Assessment and any other agency
9 designated by the director, shall utilize the methodology adopted
10 pursuant to subdivision (b) to coordinate or conduct alternatives
11 assessments of the life cycle impacts of components, chemicals,
12 or classes of chemicals used to meet the fire retardancy standards
13 of the bureau.

14 (d) The alternatives assessment shall include, but not be limited
15 to, all of the following:

16 (1) The ability for the department to assess classes of chemicals
17 determined to have similar or be likely to have similar life cycle
18 impacts based on test data, literature reviews, expert judgment,
19 structure activity relationships, and other modeling techniques.

20 (2) A determination if the component, chemical, or class of
21 chemicals in its manufacture, handling, probable use, combustion,
22 and disposal, is a component or chemical of high concern to
23 human, animal, or environmental health. In this determination the
24 state may use studies, test data, literature reviews, expert judgment,
25 structure activity relationships, and other modeling techniques.

26 (3) If hazard information is not available for endpoint concerns
27 critical for decisionmaking, the ability for the department to require
28 specific test data from the person responsible for manufacture
29 using specified methodologies and at the expense of the person
30 responsible for manufacture.

31 (4) An enforceable agreement between the person responsible
32 for manufacture and the state to fully reimburse the state for all
33 of the costs associated with coordination and conduct of the
34 assessment of the life cycle impacts of the component or chemical
35 to be considered. The enforceable agreement shall include, but
36 not be limited to, all of the following:

37 (A) A requirement for the person responsible to disclose all
38 constituent chemicals in the component or chemical to be
39 considered.

1 (B) A requirement to provide available evidence of safety to
2 human, animal, and environmental health in the manufacture,
3 handling, probable use, combustion, and disposal of the component
4 or chemical to be considered.

5 (C) A requirement to complete or cause to be completed
6 research, tests, or other investigations to address endpoint
7 concerns determined by the state.

8 (D) A due date for when the data requested is to be completed.

9 (E) The cost to be reimbursed to the state.

10 (F) A requirement that the state shall protect the trade secrets
11 of the person responsible for manufacture pursuant to Section
12 57020, but this protection does not authorize a person responsible
13 for manufacture to refuse to disclose to the department information
14 required by the alternatives assessment.

15 (5) In determining what endpoint concerns shall be addressed
16 by the person responsible for manufacture, the state shall consider
17 hazard traits, including but not limited to, each of the following:

18 (A) Mutagenicity and genetic toxicity.

19 (B) Reproductive effects, including reduction in fertility and
20 birth outcomes, including, but not limited to, birth weight.

21 (C) Developmental toxicity, including physical and metabolic
22 birth defects that are present at birth or that manifest later, and
23 effects on development of any kind, including, but not limited to,
24 motor or cognitive effects that result from exposure at any point.

25 (D) Cancer.

26 (E) Immunological effects including allergic sensitization.

27 (F) Neurological and neurodevelopmental effects.

28 (G) Effects on organs, including, but not limited to, the liver,
29 kidney, eye, blood, and heart.

30 (H) Respiratory effects.

31 (I) Endocrine disruption.

32 (J) Other disruptions or perturbations of signaling and hormone
33 systems.

34 (K) Persistence and bioaccumulation.

35 (L) Toxicity to aquatic organisms or to wildlife.

36 (6) A transparent and public process allowing for the submission
37 to the state of any data relevant to the alternatives assessment or
38 submission of a proposal for the use of other available alternatives.
39 This process shall protect trade secrets pursuant to Section 57020.

1 (7) A categorization of the safety of the component, chemical,
2 or class of chemicals to guide manufacturers and consumers
3 toward the use of the least toxic and most environmentally safe
4 components, chemicals, or methods for retarding, inhibiting, or
5 preventing fire or flame ignition or slowing combustion in the
6 products under the jurisdiction of the bureau.

7 (8) Trade secrets of the person responsible for manufacture
8 shall be protected using the process detailed in Section 57020.
9 This section does not authorize a person responsible for
10 manufacture to refuse to disclose to the department information
11 required by the alternatives assessment.

12 (e) (1) If the department, through the alternatives assessment
13 required by this section, determines that a component, chemical,
14 or class of chemicals used to meet the fire retardancy standards
15 of the bureau is a component or chemical of high concern for
16 human, animal, or environmental health, the department, through
17 a transparent and public process and in consultation with the chief
18 of the bureau, may adopt regulations that prohibit or limit the use
19 of the component, chemical, or class of chemicals in the products
20 under the jurisdiction of the bureau.

21 (2) In making the determination in paragraph (1), the
22 department shall consider all of the following:

23 (A) The human, animal, or environmental hazards determined
24 in the alternatives assessment.

25 (B) The hazards for firefighters and other emergency response
26 personnel exposed to combustion byproducts through smoke, soot,
27 or other workplace-related exposure routes.

28 (C) The hazards for workers in the manufacture, distribution,
29 and disposal of the products under the jurisdiction of the bureau.

30 (D) The best available evidence of the degree of fire safety
31 achieved and the number of burn injuries or fatalities that may be
32 prevented by the use of the component, chemical, or class of
33 chemicals.

34 (E) The availability of alternatives for the component, chemical,
35 or class of chemicals in the products under the jurisdiction of the
36 bureau.

37 (F) The efficacy of other means to reduce burn injuries or
38 fatalities, including, but not limited to, furniture construction
39 standards, existing or expanded limitations on ignition sources,
40 reduction of fuel load, existing or improved electrical or building

1 *materials and building standards, and expanded use of fire safety*
2 *equipment, including sprinkler systems, smoke detectors, and other*
3 *technologies that might extinguish or warn of the presence of fire.*

4 *(f) Beginning on January 1, 2010, the department, in*
5 *consultation with the Office of Environmental Health Hazard*
6 *Assessment and any other agency designated by the director, shall*
7 *commence an alternatives assessment of brominated fire retardants*
8 *and chlorinated fire retardants used to meet the fire retardancy*
9 *standards of the bureau.*

10 *(g) Moneys in the Bureau of Home Furnishings and Thermal*
11 *Insulation Fund shall be available, upon appropriation by the*
12 *Legislature, to the department to pay for the implementation costs*
13 *of this section that are not reimbursable by the person responsible*
14 *for manufacture.*

15 ~~SEC. 7.~~

16 *SEC. 8.* The provisions of this act are severable. If any
17 provision of this act or its application is held invalid, that invalidity
18 shall not affect other provisions or applications that can be given
19 effect without the invalid provision or application.